

REMARKS

Claims 1-12 were pending in the subject application.

Claims 1-12 are subject to a restriction/election requirement.

Claims 13-17 are added.

Accordingly, claims 1-17 are pending.

Claims 13-17 are added to more clearly define the subject matter of the present invention. Support for new claims 13-17 may be found in original claims 3-7. No new matter is added.

Applicant requests reconsideration of the pending claims in light of the above claim amendments taken along with the following remarks.

Election / Restriction

Applicant elects, with traverse, the invention of Group I, directed to a method of preparing a compound of formula (V). Group I includes claim 1 and newly added claims 13-17. Further, as required by the Examiner, Applicant elects, with traverse, the species wherein R¹ is phenyl and R² is methyl. New claims 13-16 read upon the elected species, either specifically or, at least, generically.

Applicant notes that at least claim 1 is a generic claim, generic to at least claims 13-17. Upon allowance of the generic claim, Applicant requests entitlement to consideration of claims to additional species which are written in dependent form or

otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141.

Applicant respectfully requests reconsideration and withdrawal of the restriction requirement with respect to Groups I and II. Where the inventions are related as disclosed but are not distinct as claimed, restriction is never proper. MPEP § 806(C). In the present case, Group I is drawn to a method of making a compound of formula (V), comprising a bromination step, condensation step, reduction step, and introduction step. Group II is drawn to a method of making a compound of formula (V) comprising a bromination step, conversion step (*), condensation step, reduction step, and introduction step.

As shown above, the step marked (*) is an additional step in claim 2 (Group II) not present in claim 1 (Group I). While not acquiescing that Groups I and II are not distinct as written, Applicant urges the Examiner to consider the distinctness between these groups in light of the above comments. Should the Examiner find these two groups not distinct, then restriction between Groups I and II is not proper. However, should the Examiner continue to find these inventions patentably distinct, Applicant specifically notes, for the record, the Examiner's comments at page 3 of the present office action, stating, "[T]he level of skill in the art is not such that one invention would be obvious over the other invention (Group), i.e. they are patentable over each other."

Upon reconsideration of the distinctness of Groups I and II by the Examiner, should the Examiner rejoin the claims of Group II with Group I, Applicant elects the same compound as elected for Group I, with traverse upon the same grounds outlined above for the traversal of the election with respect to Group I.

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Conclusion

In summary, Applicant respectfully submits that the instant application is in condition for allowance. Early notice to that end is earnestly solicited.

If a telephone conference would be of assistance in furthering prosecution of the subject application, Applicant requests that the undersigned be contacted at the number below.

No further fee is required in connection with the filing of this Amendment. If any additional fees are deemed necessary, authorization is given to charge the amount of any such fee to Deposit Account No. 08-2525.

Respectfully submitted,



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